

REMARKS

Claims 97-141 are currently pending in this application. Claims 97-141 have been rejected. No claims have been canceled. Therefore, Claims 97-141 are still pending in the Application. Reconsideration of the application based on the arguments submitted below is respectfully requested.

Claim Rejections - 35 U.S.C. §103(a)

Claims 97-141 have been rejected under 35 U.S.C. §103(a) based on the Kelly 5,913,204 and Cook 6,338,044 patents. Applicant respectfully traverses this rejection because the portions of Kelly and Cook cited and relied upon by the examiner do not teach or suggest one or more of the claimed features in each of these claims. For example, rejected Claim 97 is directed to a computer system *that*

includes a user database containing demographic profile information for a plurality of registered users. The Examiner cites col. 2, lines 40-67 of Kelly as teaching this limitation (see p. 2 of February Office Action). The cited portion of Kelly does not contain any reference to a user database, let alone a user database containing demographic profile information. The cited portion of Kelly relied on by the Examiner is included below.

The method and apparatus for surveying and reporting listener opinion of a list of songs are described with reference to FIGS. 1-4 which are provided for illustrative purposes only and are not meant to limit the scope of the present invention. FIG. 5 represents a flow chart of the inventive method which is described below.

A preferred purpose of the method and apparatus of the present invention is described below with reference to determining the listener appeal, familiarity, and fatigue for a list of songs comprising the music library of a radio station. However, the method and apparatus of the

present invention may be used generally to determine listener appeal, familiarity, and fatigue for a list of songs for any purpose. The resultant radio station conducting the research. The survey method may be conducted locally in a single market, regionally, or on a national scale depending on the needs of the radio station or network of stations (hereinafter collectively referred to as "the radio station").

Initially, a group of music listeners is selected from which individual listener opinions are recorded. Individual listeners may be selected based on their compliance with specific listener criteria including geographic residence, music preference, demographic age group, household income and/or racial or ethnic background.

The geographic area or geographic market from which the individual listeners are selected is usually determined by the actual geographic market for service where potential listen-;

The Applicant has reviewed the above-referenced language and can find no reference to a user database as suggested by the Examiner.

There are also additional claim limitations included in Claim 97 that, contrary to the Examiner's statements otherwise, are not taught by Kelly. The computer system claimed in Claim 97 also requires an opt-in database containing user email addresses for registered users who have chosen to receive emails containing music and entertainment information, and a radio station database containing information regarding a plurality of radio stations. The Examiner cites col. 3, ll. 1-54 of Kelly as teaching the required opt-in and radio station databases. The cited portion of Kelly, however, does not include any reference to an opt-in database or a radio station database as required by Claim 97. The cited portion of Kelly is basically an entire column and has not been included here because of its length. A review of the language in that portion, however, clearly indicates that it

does not provide support for the Examiner's position that Kelly teaches the use of opt-in and radio station databases.

Claims 98-141 include similar claim limitations that are not taught by the references cited and relied upon by the Examiner.

Request to Withdraw the Finality of the February 10, 2005 Office Action

As indicated above, the cited and relied upon portions of Kelly and Cook do not teach or suggest at least one of the claimed features in each of the rejected claims. Applicant requests that the patent examiner withdraw the finality of the February 10, 2005 Office Action so that the applicant can submit a response clearly explaining to the examiner how Claims 97-141 are patentable over the Kelly and Cook references.

Telephone Interview

On August 10, 2005, the undersigned attorney participated in a telephone interview with Patent Examiner Vanel Frenel and Supervising Patent Examiner Joseph Thomas relating to the February 10, 2005 Office Action. During that interview, Claims 97-141 were discussed, as well as the teachings of the Kelly and Cook references. The undersigned also expressed his concern that the cited portions of the Kelly and Cook references did not appear to teach or suggest many of the claim limitations required by rejected Claims 97-141. Examiner Thomas elaborated on the rejections of Claims 97-141 and pointed out in the cited references where various claim limitations in the rejected claims were taught or suggested. The undersigned acknowledged that some of the claim limitations in the rejected claims

were taught by the cited references. The fact that some claim limitations in the rejected claims were not taught by the cited references, such as the requirement for an opt-in database with email addresses in Claim 97, was acknowledged by Examiner Thomas during the telephone interview. As a result, Examiners Frenel and Thomas agreed to withdraw the finality of the February 10, 2005 Office Action. At the conclusion of the telephone interview the undersigned attorney, Examiner Frenel, and Supervising Patent Examiner Thomas agreed to the following:

1. The undersigned would file a formal response to the February 10, 2005 Office Action requesting that Examiner Frenel withdraw the finality of that action because the cited portions of the Kelly and Cook references did not teach or suggest some of the claim limitations required by rejected Claims 97-141.

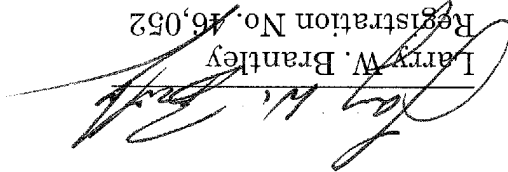
2. In response, Examiner Frenel would withdraw the finality of the February 10, 2005 Office Action and issue a new non-final office action clearly identifying portions of the Kelly and Cook references (or any other references that might be relevant) supporting any claim rejections included in that action.

3. The undersigned would be allowed to file a response to this new non-final action, amending Claims 97-141 as necessary in order to try to place those claims in condition for allowance.

Pursuant to 37 C.F.R. § 1.136(a), Applicant petitions the Commissioner to extend the time for responding to the February 10, 2005, Office Action for 3 months from May 10, 2005, to August 10, 2005. The Commissioner is authorized to charge

the required petition fee of \$510 to Deposit Account 23-0035. The Commissioner is also authorized to charge any deficiency or credit any overpayment associated with the filing of this Response to Deposit Account 23-0035.

Respectfully submitted,


Larry W. Brantley
Registration No. 46,052
WADDEY & PATTERSON
A Professional Corporation
Customer No. 23456

ATTORNEY FOR APPLICANT

Larry W. Brantley
Waddey & Patterson
414 Union Street, Suite 2020
Bank of America Plaza
Nashville, TN 37219
(615) 242-2400

CERTIFICATE OF TRANSMISSION

I hereby certify that this Response To Office Action is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-6769 on August 10, 2005.

Larry W. Brantley

Larry W. Brantley
Signature
Registration Number 46,052
August 10, 2005
Date